

III. REMARKS

Claims 1-10 are pending in this application. Applicants do not acquiesce in the correctness of the rejections and reserve the right to present specific arguments regarding any rejected claims not specifically addressed. Further, Applicants reserve the right to pursue the full scope of the subject matter of the original claims in a subsequent patent application that claims priority to the instant application. Reconsideration in view of the following remarks is respectfully requested.

In the Office Action, claims 1-3 and 6-8 are rejected under 35 U.S.C. §102(e) as allegedly being anticipated by *Hambrecht et al.* (U.S. Patent No. 6,629,082), hereafter "Hambrecht." Claims 4-5 and 9-10 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Hambrecht in view of Official Notice.

A. REJECTION OF CLAIMS 1-3 AND 6-8 UNDER 35 U.S.C. §102(e)

With regard to the 35 U.S.C. §102(e) rejection over Hambrecht, Applicants assert that Hambrecht does not teach each and every feature of the claimed invention. For example, with respect to independent claims 1 and 6, Applicants submit that Hambrecht fails to teach obtaining supply information including a supply quantity and a supply price from at least one commodity supplier for a particular commodity item. The passage of Hambrecht cited by the Office teaches, "[a]t the price where the cumulative amount of requested shares is equal to the amount of shares the company wishes to sell, the clearing price is set." Col. 1, lines 42-45. However, the clearing price is determined by an Auction auditor of the Hambrecht invention (Col. 3, lines 52-64) and is not obtained from the commodity supplier. Furthermore, Hambrecht teaches away from the

providing of an initial price. See e.g., col. 2, lines 33-54. Nowhere does Hambrecht teach that the commodity supplier provides its clearing price or any other initial price.

In contrast, the claimed invention includes "...obtaining supply information including a supply quantity and a supply price from at least one commodity supplier for a particular commodity item." Claim 1. As such, the supply price of the claimed invention is not calculated by the system as it the clearing price of Hambrecht, but is instead obtained from at least one commodity supplier. Furthermore, unlike Hambrecht in which the providing of an initial price is discouraged, the claimed invention includes obtaining supply information including a supply quantity and a supply price. For these reasons, obtaining of the supply information as included in the claimed invention is not taught by the setting of the clearing price of Hambrecht. Accordingly, Applicants respectfully request that the Office withdraw its rejection.

With further respect to independent claims 1 and 6, Applicants submit that Hambrecht also fails to teach selecting an optimum combination of intending purchasers, selling quantities, selling prices, commodity suppliers, supply quantities, and supply prices by comparing only the desired purchase price and the desired purchase quantity of said purchase wish list with the supply price and supply quantity of said supply list. The Office equates this feature of the claimed invention with the ranking of bids in descending order, accumulating rolling quantity for commodity allocation and setting commodity pricing considered optimal for buyers and sellers of Hambrecht. Office Action, page 4. However, the pricing considered optimal for buyers (i.e., the clearing price) that is determined by the auction auditor of Hambrecht uses bid quantities, bid prices and a quantity of securities being offered. Col. 3, lines 52-64. To this extent, Hambrecht does not utilize a price of the securities being offered to determine the clearing price.

Furthermore, as stated above, the Office appears to equate the clearing price of Hambrecht with the supply price of the claimed invention. Office action, page 3. The Office then appears to equate the selecting of the optimum combination of the claimed invention with the setting of commodity pricing considered optimal of Hambrecht. Office Action, page 4, par 2. However, the clearing price of Hambrecht is equivalent to the commodity pricing considered optimal (i.e., the result achieved by the Hambrecht invention). See e.g., col. 1, lines 42-51. To this extent, the clearing price in Hambrecht is not a factor that is used in determining the optimal stock price, but is instead the optimal stock price, itself. Thus, the clearing price of Hambrecht is not used in a comparison in the Hambrecht determination.

In contrast, the claimed invention includes "...selecting an optimum combination of intending purchasers, selling quantities, selling prices, commodity suppliers, supply quantities, and supply prices by comparing only the desired purchase price and the desired purchase quantity of said purchase wish list with the supply price and supply quantity of said supply list." Claim 1.

As such, unlike Hambrecht in which a comparison involving a supply price of securities is not used in determining the clearing price, in the claimed invention the optimum combination is selected by comparing factors that include supply price. For these reasons, the determination of Hambrecht does not teach the selecting of an optimum combination as included in the claimed invention. Accordingly, Applicants respectfully request that the Office withdraw its rejection.

With respect to claims 2 and 7, Applicants submit the Hambrecht also does not teach a plurality of supply quantity ranges. The Office does not specifically address this feature in the Office Action. However, Applicants submit that Hambrecht teaches only a single quantity of securities and not a plurality of supply quantity ranges. Furthermore, Hambrecht does not teach

one or more corresponding supply prices for each supply quantity. In contrast, the claimed invention includes "...the supply quantities in said supply list are classified into a plurality of supply quantity ranges each having a same predetermined span, and one or more corresponding supply prices are indicated for each of said supply quantities." Claim 2. Accordingly, Applicants respectfully request the Office's withdrawal of the rejection.

With regard to the Office's other arguments regarding dependent claims, Applicants herein incorporate the arguments presented above with respect to independent claims listed above. In addition, Applicants submit that all dependant claims are allowable based on their own distinct features. However, for brevity, Applicants will forego addressing each of these rejections individually, but reserve the right to do so should it become necessary. Accordingly, Applicants respectfully request that the Office withdraw its rejection.

B. REJECTION OF CLAIMS 1-3 AND 6-8 UNDER 35 U.S.C. §103(a) OVER HAMBRECHT IN VIEW OF OFFICIAL NOTICE

With regard to the 35 U.S.C. §103(a) rejection over Hambrecht in view of Official Notice, Applicants initially assert that there is no motivation or suggestion to modify Hambrecht to reflect the teachings of Official Notice. Specifically, the Office states that Hambrecht teaches optimizing value for sellers and buyers, maximizing share value, and realizing significant savings over the underwriting discounts charged in typical offerings. Applicants submit that, contrary to the statement of the Office, these factors do not teach or suggest maximizing the *profit of the seller*. If fact, it can be deduced from the workings of the Hambrecht invention that the main objective of the Hambrecht invention is not to maximize seller profit but instead to sell an entire quantity of stock. To this end, the Hambrecht invention continues to lower the stock price until

the entire quantity of stock has been sold (i.e., the rolling accumulation surpasses the quantity of securities being offered). Col. 3, lines 59-60. At this point, the sales price (clearing price) of the stock is set to that of the lowest bid included in the rolling accumulation. Col. 1, lines 42-44; col. 3, lines 59-64. All bidders are allowed to purchase the stock at the clearing price.

To this extent, Hambrecht gives no thought to seller profit in performing its determination of the clearing price. For example, suppose the seller of Hambrecht were selling 1000 shares, and the following two bids were received: 999 shares at \$100 and 50 shares at \$1. The Hambrecht invention as disclosed would sell all 1000 shares for \$1 apiece, even though the sale of the 999 shares at \$100 apiece and non-sale of the remaining 1 share would yield a much larger profit for the seller than the selling of all 1000 shares at \$1 apiece. As such, Official Notice would completely overwrite the Hambrecht algorithm and destroy the intended function of Hambrecht, that is, to dispose of all of the stock. Accordingly, the Office has failed to prove a *prima facie* case of obviousness and, as such, Applicants respectfully request withdrawal of the rejection.

With further regard to the 35 U.S.C. §103(a) rejection over Hambrecht in view of Official Notice, Applicants assert that the Office's factual assertion is not properly based upon common knowledge. For example, Applicants assert that a running computation of profit comparing only the desired purchase price and the desired purchase quantity of said purchase wish list with the supply price and supply quantity of said supply list is not obvious to one skilled in the art as asserted by the Office. Accordingly, Applicants respectfully request that the Office support the finding with references that show these features or withdraw the rejection.

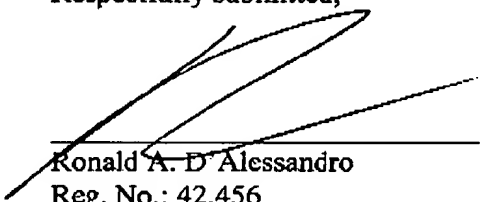
With respect to the Office's other arguments regarding dependent claims, Applicants herein incorporate the arguments presented above with respect to the independent claims from which the dependent claims depend. Furthermore, Applicants submit that all dependant claims are allowable based on their own distinct features. Since the cited art does not teach each and every feature of the claimed invention, Applicants respectfully request withdrawal of this rejection.

IV. CONCLUSION

In light of the above, Applicants respectfully submit that all claims are in condition for allowance. Should the Examiner require anything further to place the application in better condition for allowance, the Examiner is invited to contact Applicants' undersigned representative at the number listed below.

Respectfully submitted,

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